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**TRANSMITTAL  
FORM**

(to be used for all correspondence after initial filing)

Total Number of Pages in This Submission 3

Application Number	10/595,735
Filing Date	05/08/2006
First Named Inventor	Bruce G. Kania
Art Unit	3643
Examiner Name	Andrea M. Valenti
Attorney Docket Number	FOU06-0002

**ENCLOSURES (Check all that apply)**

<input type="checkbox"/> Fee Transmittal Form <input type="checkbox"/> Fee Attached <input type="checkbox"/> Amendment/Reply <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement  <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Reply to Missing Parts/ Incomplete Application <input type="checkbox"/> Reply to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____ <input type="checkbox"/> Landscape Table on CD	<input type="checkbox"/> After Allowance Communication to TC <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input checked="" type="checkbox"/> Other Enclosure(s) (please identify below): Provisional Election (2 pages)
<input type="checkbox"/> Remarks		

**SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT**

Firm Name	Antoinette M. Tease, P.L.L.C.		
Signature			
Printed name	Antoinette M. Tease		
Date	06/24/2008	Reg. No.	53680

**CERTIFICATE OF TRANSMISSION/MAILING**

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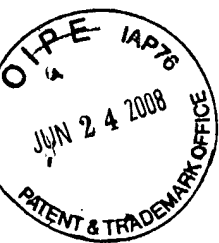
Signature

Typed or printed name Antoinette M. Tease

Date 06/24/2008

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No.: 10/595,735  
Filing Date: 05/08/2006  
Applicant: Bruce G. Kania  
Title: Renewably Buoyant, Self-Protective Floating Habitat  
Examiner/GAU: Andrea M. Valenti/3643

**PROVISIONAL ELECTION**

The Honorable Commissioner for Patents  
Washington, District of Columbia 20231

Dear Sir:

In response to the Office Action dated June 5, 2008, the applicant provisionally elects, with traverse, Group INa, claims 94-97 and 99, for further reexamination on the merits in the present application.

The applicant respectfully traverses the restriction requirement because the PTO has not carried forward its burden of proof to establish distinctness for each and every claim group. In particular, MPEP

§ 802 states:

If two or more independent and distinct inventions are claimed in one application, the Director may require the application to be restricted to one of the inventions.

Furthermore, MPEP § 803 provides:

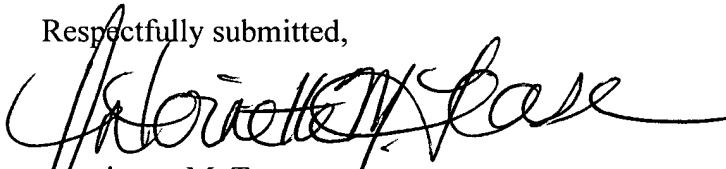
If the search and examination of an entire application can be made without serious burden, the Examiner must examine it on the merits, even though it includes claims to distinct or independent inventions.

In this case, the examiner has made distinctions between claim groups that are clearly not independent and distinct inventions, nor would the examiner face a serious burden if certain claim groups were searched together.

For example, the examiner has treated claims 44-45, 50-53 and 93 as a single claim group (Species 1G) and claims 46-53 and 93 as another claim group (Species 1H). Claims 44, 46 and 49 are identical except that in claim 44 the bottom, sides and top of the habitat are resistant to penetration by plant roots, in claim 46 only the bottom and sides are resistant to penetration by plant roots, and in claim 49 only the sides are resistant to penetration by plant roots. There is no logical basis for treating claim 44 any differently than claims 46 and 49; nonetheless, the examiner has segregated these claims into separate claim groups.

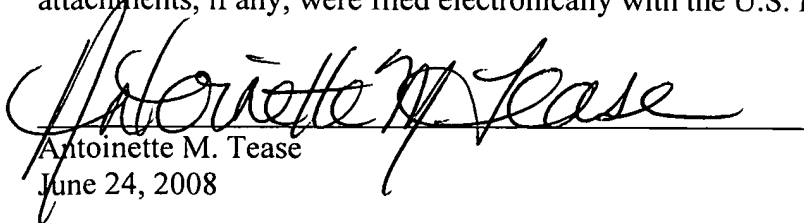
Accordingly, the applicant respectfully traverses the outstanding election requirement. Although the applicant acknowledges that a restriction requirement is appropriate in this case, the applicant also feels that the examiner may have gone overboard in establishing the separate claim groups.

Respectfully submitted,



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**Certificate of Mailing:** I certify that on the date below this document and referenced attachments, if any, were filed electronically with the U.S. Patent and Trademark Office.



Antoinette M. Tease  
June 24, 2008